

Internal Revenue Service  
**memorandum**

date: **AUG 07 1991**

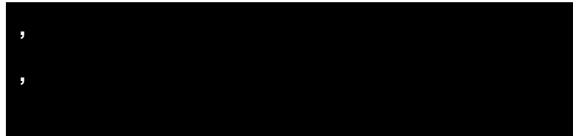
to: Director, Internal Revenue Service Center  
Kansas City, MO  
Attn: Entity Control

from: Technical Assistant  
Employee Benefits and Exempt Organizations

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subject: CC:EE:3 - TR-45-968-91  
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] is not an employer under the Railroad Retirement Act and the Railroad Unemployment Tax Act.

(Signed) Ronald L. Moore

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RONALD L. MOORE

Attachment:

Copy of letter from Railroad Retirement Board

**08633**

cc: Mr. Gary Kuper  
Internal Revenue Service  
200 South Hanley  
Clayton, MO 63105

UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 RUSH STREET  
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

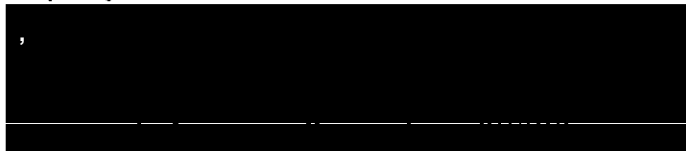
Assistant Chief Counsel  
(Employee Benefits and  
Exempt Organizations)  
Internal Revenue Service  
1111 Constitution Avenue., N.W.  
Washington, D.C. 20224

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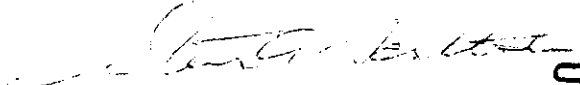
Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,

  
Steven A. Bartholow  
Deputy General Counsel

Enclosure

000079

RECEIVED

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CC:CORP:T:C

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

## MEMORANDUM

MAY 30 1991

TO: Director of Research and Employment Accounts

FROM: Deputy General Counsel

SUBJECT: [REDACTED]  
Employer Status

This is in reply to your Form G-215 request of March 12, 1991, for my opinion as to the employer status of [REDACTED] under the Railroad Retirement and Railroad Unemployment Insurance Acts (RRA and RUIA). The status of this company has not previously been considered.

In a letter dated March 1, 1991, responding to questions raised by your bureau, counsel for [REDACTED] described the business of the company as follows:

[REDACTED]

[REDACTED] is a wholly owned subsidiary of the [REDACTED] owns [REDACTED] rail carriers which have been determined to be employers under the Acts: [REDACTED] with service creditable from [REDACTED] and [REDACTED], with service creditable from [REDACTED].

According to a letter from counsel, "[REDACTED] and/or its parent [REDACTED] perform only very limited administrative and tax services for the subsidiary railroad companies of [REDACTED]." In a telephone conversation with a member of my staff, [REDACTED], attorney for [REDACTED], clarified this information by stating that the administrative and tax services are provided by [REDACTED] and that [REDACTED].

Director of Research and Employment Accounts

acts merely as a liaison between the railroads and [REDACTED] in the provision of these services.<sup>2/</sup> Counsel for [REDACTED] has advised that these services provided by [REDACTED] consist of filing the consolidated tax return for the group, buying insurance for the group, and providing legal services to the group. The staff of [REDACTED] spend less than [REDACTED] of [REDACTED] % of their time on railroad business. Substantially less than [REDACTED] th of [REDACTED] % of [REDACTED] s total revenues are derived from its railroad affiliates.

Section 1(a)(1) of the Railroad Retirement Act defines the term "employer," in pertinent part, as follows:

"The term 'employer' shall include--

"(i) any express company, sleeping-car company, and carrier by railroad, subject to part I of the Interstate Commerce Act;

"(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad \* \* \*." 45 U.S.C. § 231(a)(1)(i) and (ii).

Section 1(a) of the RUIA (45 U.S.C. § 351(a)) contains a similar provision.

Section 202.5 of the Board's regulations (20 CFR 202.5) defines a company under common control with a carrier as one controlled by the same person or persons which control a rail carrier. The Board has determined that a parent company may be under common control with its subsidiaries within the terms of this provision. See Appeal of Itel Corporation, Board Order 82-140, reversed on other grounds, 710 F. 2d 1223 (7th Cir. 1983). Section 202.7 of the regulations (20 CFR 202.7) further defines a

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<sup>2/</sup> In connection with an inquiry into the employer status of [REDACTED], counsel for that company advised that [REDACTED] staff spend less than [REDACTED] of [REDACTED] % of their time on railroad business and derive less than [REDACTED] of [REDACTED] % of their revenues from railroad operations of [REDACTED] subsidiary railroads, including the [REDACTED] and the [REDACTED].

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service as in connection with railroad transportation if it is reasonably directly related, functionally or economically, to the performance of rail carrier obligations. Finally, section 202.6 (20 CFR 202.6) provides that a service which is insubstantial is casual service under the Acts.

There is no evidence that [REDACTED] conducts any rail carrier operations; hence, [REDACTED] is not a rail carrier employer under section 1(a)(1)(i). [REDACTED] does own the [REDACTED] and the [REDACTED], both of which are rail carrier employers covered under the Acts. [REDACTED] is therefore under common control with its parent [REDACTED], and with its rail carrier subsidiaries.

The question then becomes whether or not [REDACTED] provides service in connection with rail transportation, and, if so, whether such service is casual in nature. The evidence in file indicates that [REDACTED] provides no services for its railroad subsidiaries which are reasonably directly related to the performance of their obligations as common carriers by railroad, but merely acts as liaison for the performance of limited administrative and tax services for those railroads by its own parent, [REDACTED], and that its staff spend less than [REDACTED] of [REDACTED] of their time on such liaison activities. Accordingly, the services provided would not constitute services in connection with rail transportation within the meaning of section 202.7 of the Board's regulations.

Based on the foregoing, it is my opinion that [REDACTED] is not a covered employer under the Acts. A Form G-215 giving effect to this determination is attached.



Steven A. Bartholow

Attachment

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0494E/C. 794-91

